

APPEAL NO. 042151
FILED OCTOBER 8, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 26, 2004. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 9th quarter (September 10 through December 9, 2003), the 10th quarter (December 10, 2003, through March 10, 2004), or the 11th quarter (March 11 through June 9, 2004). The claimant appealed, disputing the determination of nonentitlement. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The parties stipulated to the eligibility criteria of a compensable injury, impairment rating, no commutation of impairment income benefits, and that the qualifying period for the 9th quarter was from May 9 through August 27, 2003, the qualifying period for the 10th quarter was from August 28 through November 26, 2003, and that the qualifying period for the 11th quarter was from November 27, 2003, through February 25, 2004. At issue is the requirement of Section 408.142(a)(4) and Rule 130.102(b)(2) that the claimant has made a good faith effort to obtain employment commensurate with his ability to work. The claimant proceeds on a basis that he had a total inability to work in the qualifying periods at issue.

Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. In Texas Workers' Compensation Commission Appeal No. 960880, decided June 18, 1996, the Appeals Panel stated that "medical evidence from the filing periods is clearly relevant but other medical evidence from outside the periods, especially that which is relatively close to the filing periods, may be relevant to the condition of the claimant during those periods." In Texas Workers' Compensation Commission Appeal No. 001055, decided June 28, 2000, the Appeals Panel noted that medical evidence from outside the qualifying period may be considered insofar as the hearing officer finds it probative of conditions in the qualifying period. The hearing officer found that the medical records from Dr. J were conclusory and were not narrative reports which specifically explained how the injury caused a total inability to work during the qualifying periods for the 9th through the 11th quarters and that there were other records that showed that the claimant was able to return to work during the relevant qualifying

periods. Our review of the documents presented at the hearing indicates that there is sufficient support for the hearing officer's determination that the claimant failed to meet the requirements to make a good faith effort to obtain employment under Rule 130.102(d)(4).

We have reviewed the complained-of determinations and conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TWIN CITY FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JIM ADAMS, ATTORNEY
450 GEARS ROAD, SUITE 500
HOUSTON, TEXAS 77067.**

Margaret L. Turner
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Thomas A. Knapp
Appeals Judge